



State of Arizona
Department of Education

Tom Horne
Superintendent of
Public Instruction

Memorandum

May 17, 2004
CN #21-04

To: School Health and Nutrition Sponsors

From: Ann Hart, Director
Health and Nutrition Services

Brian Walsh, Contracts Officer
Health and Nutrition Services

Subject: Oversight of FSMC-USDA Policy Memo 04-03 and 04-04

The purpose of this memo is to re-disseminate and emphasize policy guidance from USDA regarding the oversight of Food Service Management Companies (FSMC) as it pertains to current or future food service operations. To view a complete copy of the policy memos go to: <http://www.ade.az.gov/health-safety/cnp/nsfp/Operating/ContractingforMealService.asp>.

The basis of the policy memos is a direct result of the findings from the Office of the Inspector General (OIG) Audit Report 27601-0027-CH, Food Service Management Companies. In almost all of the findings the main cause for the problems resulted from the SFAs failing to provide proper oversight of their food service operation and their contracted FSMCs.

Therefore, the SFAs responsibility is to ensure that its food service operation is in conformance with the SFAs agreement under the program (§210.9(b)). Some of these responsibilities include: monitoring the proper use of the food service account; determining the eligibility of children for free and reduced price meals; ensuring the claim for reimbursement is only for reimbursable meals. In addition, SFAs are required to have specific procedures in place to determine the validity of meals claimed for reimbursement (§210.7(c)). To ensure this, the SFA must conduct an annual on-site review of each school prior to February 1 of each school year.

Additional findings from the OIG report identified repeated instances in which FSMCs ignored, amended, deleted or changed solicitation and contract terms. Failure to comply with specific solicitation and contract terms is contrary to good business practices and a violation of the long-standing program and USDA regulations regarding competitive procurements. USDA regulations (§3016.36(a), §210.21(a),

§215.14(a), §220.16(a)) require that all potential contractors have an opportunity to compete on a fair and equal basis. Therefore, when a SFA permits a contractor to ignore or change solicitation requirements, competition has been impaired and the procurement process comprised.

Every SFA must maintain a system of contract administration that ensures its contractors perform in accordance with terms, conditions and specifications of their contracts. As part of this system, the SFA must monitor and enforce its contract terms. In order to facilitate the purchasing process the following guidance is provided.

- Unless prohibited by applicable State or local requirements, the process can continue (with a minor change to the solicitation documents), as long as the change is provided to all potential contractors in a timely manner. Please refer to the Arizona School District Procurement Code R7-2-126 for more information. Only minor changes to the solicitation documents are allowable after the original approval by ADE.
- In the case of an executed contract it is permissible to allow a minor change to be drafted by the SFA and approved by both parties from the original approval from ADE. However, ADE reserves the right to review a material change for compliance with the original solicitation documents in the interest of open and fair competition.

This is a reminder that ADE policy requires that all solicitation documents must receive prior approval from ADE before going out for advertisement. Upon the award of a contract and approval by the board, an unsigned copy must receive prior approval from ADE before the contract is executed. A completed on-line application must also be approved to receive reimbursement for claims.

If you have any questions about this memo or the FSMC approval process please go to: <http://www.ade.az.gov/health-safety/cnp/nsfp/Operating/ContractingforMealService.asp> or contact the Health and Nutrition Contracts Officer, Brian Walsh at (602) 542-6208 or bwalsh@ade.az.gov.

cc: Mike Jacob, SNP, WRO
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